

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/1322/2019

BETWEEN:

COVENANT FAVOUR LIMITED.....CLAIMANT/APPLICANT

VS

1. MINISTER OF FEDERAL CAPITAL TERRITORY

2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

3. UMMATULHAYATIL ISLAM SOCIETY.....DEFENDANTS/RESPONDENTS

RULING

This is a Ruling on Motion on Notice with No. M/9177/19, brought pursuant to Order 43 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the court, supported by a Paragraph affidavit deposed by one Paul Jacob a Litigation Secretary in the law firm of Claimant/Applicant, also filed a Written Address and adopts same as oral argument.

The Claimant/Applicant seeks the following reliefs;

- (1) An Order of this Hon. Court granting leave to the Claimant/Applicant to amend its Writ of Summons, Statement of Claim and Witness Statement on Oath.

- (2) An Order of this Hon. Court amending Claimant's Writ of Summons, Statement of Claim and Witness Statement on Oath.
- (3) An order of this Hon. Court striking out the name of UmmatulHayatil Islam Society being the 3rd Defendant/Respondent from the proceedings.
- (4) An Order of the Hon. Court joining the incorporated Trustees of UmmatualHayatil Islam Society to the proceedings as 3rd Defendant.
- (5) An Order of the Hon. Court deeming Claimant/Applicant's Amended Writ of Summons, Statement of Claim and Amended Witness Statement on Oath as duly filed and re-sworn respectively, appropriate fees having being paid.
- (6) And the Omnibus relief.

Responding, 1st/2nd Defendants/Respondents filed a Written Address in opposition to the Claimant's Motion on Notice on 11/3/2020, and adopt same oral argument.

In the Written Address of the Claimant/Applicant Ibrahim IdaiyeEsq of counsel formulated a sole issue for determination which is;

"Whether the Claimant/Applicant's counsel has placed sufficient materials before this Hon. Court to entitle him to a grant of this application".

Submits that this court has a wide discretion to grant or refuse leave to amend the process of court that the application is in tandem with the

guiding principles for granting an application for amendment stated in the case of Ojah&OrsVsJogbani&Ors (1975) 1 NMLR 95 and Cropper Vs Smith (1884) 26 Ch D 700, 710 – 711.

Submits that Order 43 Rule 1 and 3 of the Rules of Court empowers the court to allow an amendment for the purport of determining the real question or issues raised. Referred to AmadiVs Thomas Aplim& Co Ltd (1972) 1 ALL NLR (PT 1) 409 Shell VsAmba(1992) 2 SCNJ 152 160. Ika Local Government Area Vs Augustine Mba (2007) 12 NWLR (PT.1049) 3676 and Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration Act 2011).

Urge court to grant the application having shown good cause.

In their Written Address, 1st/2nd Defendants/Respondent's counsel formulated a sole issue for determination that is;

“Whether by law, a party can be allowed to substitute a non-juristic person with a juristic person”.

Submits that a party to a Suit is allowed to amend processes under the Rules of Court where such amendment does not go to the root of the Suit or offend the Provision of the Rules. The Court is always encouraged to refuse any application for amendment that is offensive to substantive and procedural laws that a party suing or being sued must possess the necessary legal status to be able to maintain an action in law.

Submits that the submission of Applicant in reliance on the case of Ojah&OrsVsOgboni&Ors(1975) 1 NMLR 95 is irreconcilable with the

admission of the Claimant in Paragraph 4 of the Statement of Claim, thus “the 3rd Defendant is not a duly Registered Incorporated Trustees with the Corporate Affairs Commission”. Submits further that a party cannot be allowed to approbate and reprobate that the Claimant/Applicant has not acted in good faith and this does not deserve the grant of the application.

Submits that a party cannot amend a court process to replace a non-juristic person. Refer to *Obike International Ltd Vs AyiteleTronics Limited* (2005) 15 NWLR (PT. 948) 362 @ 365 and *Engechela Vs Ogueri* (1996) 5 NWLR (PT.447) 227.

Submits finally that Claimant/Applicant has acted malafide therefore urge court to dismiss the application.

Having carefully considered the submission of counsel the judicial authorities cited for and against the grant of the application the court finds that only one (1) issue calls for determination that is;

“Whether or not the Applicant have placed sufficient facts to enable the court exercise its discretion in her favour”.

It is settled law, by case law and Rules of Court, that the court has the jurisdiction, power and indeed the discretion to grant leave to amend pleadings at any stage of the proceedings. See *Akaninwo Vs Nsirim* (2008) 9 NWLR (PT. 1093) @ 460 Para E – G. The exercise of the court’s discretion on whether or not to grant leave to amend is based on certain established guiding principles set out over time in a Plethoral of case law.

In *University of Ilorin Vs Adesina (No.2) (2008) ALL FWLR (PT.400) 768 @ 775 – 776 Paras G – A* the Court of Appeal held;

“The purpose of briefs of arguments before the Appellant Court like that of pleadings in the trial before the trial court is to enable the parties to know the case they are going to meet on Appeal and trial respectively. Therefore it could be concluded that since amendment is nothing but the rectification of errors(s) committed in any process pleading or proceedings at law or in equity and which is done as a matter of right or with the consent of the parties or by leave of court there ought to be no error or mistake which the courts should not allow to be corrected by parties provided it, is not intended to be fraudulent or be overreach or done malafide so as to prejudice the case of the other party”.

The court further held that;

“The test as to whether a proposed amendment should be allowed is therefore whether or not the party applying to amend can do so without placing the opposite party in such a position which cannot be redressed by that panacea which heals every sore in litigation namely costs”.

Taking a cue from this decision of the Court of Appeal as a guide in the exercise of that power, the question to ask is; first what is the nature of the amendments sought in this application? In this application, Applicant is seeking to amend her pleadings by setting out facts which were not immediately available to her and which she reckons will be of grant

assistance to court in the proper determination of this Suit. The court have read the facts stated in the supporting affidavit and the proposed amendment and find that the amendment is intended to bring to fore the real issues in controversy between the parties.

The question now to consider is; what is the consequence of this proposed amendment? It is the contention of the 1st/2nd Respondents that the Applicant, has not acted in good faith and cannot amend court processes to replace a non-juristic person. While it is true that the court have consistently been urged not to ordinarily refuse an application for an amendment of pleadings unless it is meant to delay the case embarrasses or prejudice the interest of the other side or made malafide and without the other side having the opportunity to react. See the case of U.B.N. VsDafiaga (2000) 1 NWLR (PT. 640) 175 @ 177 Ratio 2. The ground of objection in my view does not reveal any of these that would prevent the court not to exercise that discretion in favour of the Applicant. The fact that the Applicant also seek an order to strike out the name of a party does not in my view make the court to withhold its powers to grant this application, this is more so as the Applicant has identified the portions of the proceedings that she is seeking to amend. The order for striking out the name of the 3rd Defendants is a separate relief from that of leave to amend and by the Rules of Court it is also within the discretion of court whether or not to grant that order. The Rules of Court particularly Order 13 Rule 19 permits an application to strike out the name of a Defendant in a Suit.

In this instant application, Applicant stated the reason for the application in paragraph 3 (a) (b) (c) (d) of her supporting affidavit, these deposition were not challenged by the 1st/2nd Defendants by filing a counter-affidavit as required to challenge an affidavit before the court. I find those facts cogent and supporting of the application to grant the order sought.

On the relief to join Incorporated Trustees of UmmatualHayatil Islam Society to the proceedings as 3rd Defendant.

The principles guiding the joinder of parties are;

- (a) Is the cause or matter liable to be defeated by the joinder?
- (b) Is it possible for the court to adjudicate on the cause of action set up by the Plaintiff unless the third party is added as Defendant?
- (c) Is the third party a person who ought to have been joined as a Defendant?
- (d) Is the third party a person whose presence before the court as Defendant will be necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involves in the cause or matter?

See AdefarasinVsDayekh (20070 ALL FWLR (PT. 348) 911 @ 933 Paras E – G.

Applying these guidelines to the instant case and upon a careful consideration of the affidavit in support of the application. I find that the

party sought to be joined is a party who ought to have been joined as a Defendant in this Suit.

From all of these, I have no difficulty in exercising the court's discretion to grant the reliefs sought after a careful consideration of the submission of counsel and the affidavit evidence before the court. I arrive at this conclusion having found that the Applicant is not overreaching and is not brought malafide in the case of *Ojasi & Ors Vs Ogboni & Ors* (1976) ALL ANLR 277 @ 282 the Supreme Court had this to say;

"Courts do not exist for sake of discipline, but for the sake of deciding matters in controversy as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy it is as much as a matter of right on his part to have it corrected, if it can be done without injustice as anything else in the case is a matter of right".

Accordingly this application succeeds the Applicant is hereby granted'

- (1) Leave to amend her Writ of Summons, Statement of Claim and Witness Statement on Oath.
- (2) An Order to amending her Writ of Summons, Statement of Claim and Witness Statement on Oath.
- (3) An Order striking out the name of UmmatulHayatil Islam Society being the 3rd Defendant/Respondent from the proceedings.

- (4) That the Incorporated Trustees of UmmatualHayatil Islam Society is hereby joined as 3rd Defendant to the Suit.
- (5) The Claimant/Applicant's Amended Writ of Summons, Statement of Claim and Amended Witness Statement on Oath are hereby deemed as duly filed and re-sworn respectively, appropriate fees having being paid.
- (6) 1st& 2nd Defendants are at liberty to react to the said Amended Processes.

HON JUSTICE O.CAGBAZA

Judge

4/6/2020

IBRAHIM IDIAYEESQ FOR THE CLAIMANT/APPLICANT

M.S. UGWU WITH HIM V. ABAUBAKARESQ FOR THE 1ST/2ND
DEFENDANTS/RESPONDENTS